

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

IN RE:

IVAN K. PHILLIPS
LINDA A. PHILLIPS

CASE NO. 17-30589-DSK

CHAPTER 7

Debtors.

IVAN K. PHILLIPS
AND LINDA A. PHILLIPS

Debtors/Plaintiffs

V.

ADVERSARY NO. _____

UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE AS AN AGENCY
OF THE UNITED STATES OF AMERICA

Defendant

**COMPLAINT BY IVAN K. PHILLIPS AND LINDA A. PHILLIPS
TO DETERMINE THE DISCHARGEABILITY OF CERTAIN TAXES
OWED TO INTERNAL REVENUE SERVICE, AS AN AGENCY OF THE
UNITED STATE OF AMERICA AND FOR TURNOVER OF ANY FUNDS
SEIZED AFTER FILING OF THE CHAPTER 7 CASE**

Comes now the Chapter 7 Debtors Ivan K. Phillips and Linda A. Phillips, (“Debtors”) and request the Court to determine the dischargeability of the taxes owed to the Internal Revenue Service, as an agency of the United States of America (hereafter “IRS”), pursuant to 11 U.S.C. §523(a)(1) and turnover of any funds seized by the IRS after the date of the filing of the case herein and would state as follows:

1. Ivan K. Phillips and Linda A. Phillips (hereafter “Phillips”, “Plaintiffs” or “Debtors”) are individuals residing in Shelby County, Tennessee at 62 South Main, Apt. 412, Memphis, TN 38103.

2. IRS is an agency of the United States of America which may be served pursuant to Fed. Rule of Bankr. Proc. 7004(4) by serving the summons and complaint on the civil process clerk at the Office of the United States Attorney for the Western District of Tennessee and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia.
3. Debtors filed a petition under Chapter 7 of the United States Bankruptcy Code (“the Code”) on December 4, 2017 (the “Petition Date”).

JURISDICTION AND VENUE

4. The Court has jurisdiction pursuant to 28 U.S.C. §157. This is a core proceeding pursuant to Section 157(b)(2)(I).
5. Venue lies in the Western District of Tennessee pursuant to 28 U.S.C. § 1408.

GENERAL FACTUAL ALLEGATIONS

6. Debtors have listed on Schedules E of the Debtors’ filed Schedules a debt owed to IRS of approximately \$34,487.95 for year 2009.
7. Debtors have listed on Schedules E of the Debtors’ filed Schedules a debt owed to IRS of approximately \$4,486.91 for Year 2008.
8. Debtors have listed on Schedules E of the Debtors’ filed Schedules a debt owed to IRS of approximately \$16,665.95 for Year 2008.
9. Debtors have listed on Schedules E of the Debtors’ filed Schedules a debt owed to IRS of approximately \$211,886.00 for Years 2005-2013.
10. Debtors through their attorney and accountants have calculated the following taxes should be eligible for discharge based upon §523(a)(1) and §507(a)(8):

Debtors filed returns for their personal income taxes for the years 2005 through 2013 and filed such returns before the three year limitation. Debtor filed personal income tax returns for the years 2005 through 2013 and all taxes have been assessed before the 240 day limitation.

COUNT I

11. Plaintiffs incorporate and allege the allegations as set forth in paragraphs 1 through 10 above as if set forth herein verbatim.

12. Plaintiff allege that based upon 11 U.S.C. §523(a) that \$267,512.81 as stated above as to the IRS debt owed by Plaintiffs should be discharged as it is tax debt as defined under 11 U.S.C. §507(a)(8) that is therefore dischargeable under 11 U.S.C. §523(a)(1).

COUNT II

13. Plaintiffs incorporate and allege the allegations as set forth in paragraphs 1 through 10 above as if set forth herein verbatim.
14. IRS sent a letter on December 11, 2017 stating they were taking part of social security benefits from the benefits to Debtor Van K. Phillips in the amount of \$1,469.30 and to be withheld on January 3, 2018.
15. IRS seized the January social security benefits and have not returned them to the Debtor Ivan K. Phillips.
16. The letter from IRS is violation of the automatic stay.
17. The seizure of funds from social security of Debtors is in violation of the automatic stay.
18. The Debtors request turnover of the Social Security benefits seized after the Petition Date with interest from date of seizure.

COUNT III

19. Plaintiffs incorporate and allege the allegations as set forth in paragraphs 1 through 10 above as if set forth herein verbatim.
20. Debtor Ivan K. Phillips is entitled to a disbursement each year under his TIAA-CREF retirement fund approximately April 1, 2018 each year.
21. Debtor Ivan K. Phillips contacted TIAA-CREF and \$68,266.37 had been deducted from his retirement account on April 2, 2018.
22. Debtor Ivan K. Phillips did not receive his April 2, 2018 disbursement of \$68,266.37.
23. Debtor on approximately April 23, 2018 received a TIAA-CREF check for \$22,693.91.
24. Upon information and belief the remaining distribution for Ivan K. Phillips of \$47,643.46 has been seized by the IRS after the Petition Date.
25. The seizure by the IRS after Petition Date is in violation of the automatic stay.
26. The IRS should be ordered to turnover any seized funds with interest from date of seizure.

WHEREFORE, the Plaintiff Debtors request the Court upon appropriate notice and hearings on these matters that the Debtors' request for such IRS debt as stated above to be discharged to be granted; for turnover of the funds seized by IRS as stated above with interest from date of seizure and sanctions as should be justified to the Court and awarded by the Court and other and further relief as is just in these matters.

Respectfully submitted,

/s/ Ivan K. Phillips

Ivan K. Phillips, Debtor

/s/ Linda A. Phillips

Linda A. Phillips, Debtor

/s/ Toni Campbell Parker

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Toni Campbell Parker certifies that on the 20th Day of June, 2018 she served a copy of Complaint of Debtors to the following parties by e-mail or depositing same in a United States Postal Box located in Memphis, Tennessee, with the lawful amount of postage affixed thereto addressed to:

Debtors
Chapter 7 Trustee
U.S. Attorney's Office,
Memphis, TN

/S/ Toni Campbell Parker
TONI CAMPBELL PARKER